circumstances, I do not think there is really any merit in this technical objection of the third defendant. It is clear that the first defendant has all along wanted to put the matter before the court and obtain its approval. In her affidavit filed herein, she has expressly said so and has asked the court to rule on it.

In the result I do not think I ought to sanction the proposed sale to the third defendant. Instead, I would grant an order in terms of the first prayer.

Order accordingly.

Solicitors: *Mallal & Namazie*; *HA Jalil & Associates*; *Kamil & Co*; *Ho & Wee*.

Reported by *Ng Sheau Jiuan*

MALAYSIAN REPORTS

Nge Siew Noon v Sitiawan Credit Corporation Sdn Bhd (Bank Negara Malaysia, Intervener)

HIGH COURT (IPOH) – APPLICATION FOR EXECUTION NO 49-145-87 (CIVIL SUIT NO 24-365-87)
PEH SWEE CHIN J
7 DECEMBER 1988

Civil Procedure – Locus standi – Plaintiff sought execution of default judgment obtained against defendant bank – Bank Negara Malaysia investigating into affairs of defendant bank – Whether Bank Negara Malaysia had locus standi to intervene in plaintiff's execution proceedings

Civil Procedure – Stay of execution of default judgment obtained against defendant bank – Application for stay by Bank Negara Malaysia – Bank Negara Malaysia investigating into affairs of defendant bank – Whether court had jurisdiction to stay execution

The plaintiff obtained a judgment in default against the defendant bank and caused to be issued a writ of seizure and sale. He then obtained an order prohibiting the defendant bank from dealing with some lands owned by the defendant. By the time a summons for directions for sale of the lands was filed, other judgment creditors had filed their respective writs of seizure and sale. The intervener, Bank Negara Malaysia, then applied to intervene in these execution proceedings and sought a stay of execution under reg 7 of the Essential (Protection of Depositors) Regulations 1988 ('the Regulations') until the completion of investigation by the intervener into the affairs of the defendant. The defendant submitted that the intervener had no locus standi to appear in the proceedings and the Regulations did not give the intervener power to stop the execution. The court thus had to consider whether it had jurisdiction to grant a stay of execution of the default judgment obtained by the plaintiff.

Held, allowing the intervener's application:

(1) In a sense, an emergency situation had come into existence threatening the 'economic life' of the depositors of the defendant bank because of the supervening insolvency of the defendant. One of the ways to protect them would be to give back all the depositors a percentage of the refund of their deposits rather than to leave them in the lurch with nothing to hope for. An order made in regard to the sale of the defendant's lands would directly affect the intervener's rights against the defendant under the Regulations in protecting the depositors and as such, the intervener had the locus standi to intervene in the proceedings.

(2) At the hearing, a petition for winding up had already been presented against the defendant bank so that s 224 of the Companies Act 1965 came into operation and the grant of an order of stay was really declaratory of the effect of the said s 224.

[*Editorial Note*: The plaintiff has appealed to the Supreme Court vide Civil Appeal No 409 of 1988.]

Case referred to

1 *Pegang Mining Co Ltd* v *Choong Sam & Ors* [1969] 2 MLJ 52 (folld)

Legislation referred to
Companies Act 1965 s 224
Emergency (Essential Powers) Act 1979
Essential (Protection of Depositors) Regulations 1986 regs 4, 5, 7, 9
Rules of the High Court O 14 r 6(1)(b), O 15 r 6, O 47 r 1, O 45 r 11

R Abraham for the intervener/applicant.
Ngeh Koo Ham for the plaintiff.

Cur Adv Vult

Peh Swee Chin J: The plaintiff obtained judgment in default on 20 May 1987 for a sum of $45,000 with interest and costs against the defendant and caused to be issued a writ of seizure and sale.

The plaintiff then followed up with an application for and obtained an order prohibiting the defendant from transferring, charging, leasing or otherwise dealing with some 16 pieces of land owned by the defendant.

With considerable snowballing effect, some 30 other judgment creditors appeared to have filed their respective writ of seizure and sale by the time a summons for directions for sale of the lands in question was filed in July 1987.

The abovenamed intervener applied to intervene in these execution proceedings and sought a stay of execution under reg 7 of the Essential (Protection of Depositors) Regulations 1986 (hereinafter 'the said Regulations') until the completion of investigation by the intervener into the affairs of the defendant.

Learned counsel for the intervener submitted that his application was made because his client was an interested party. The intervener, he said, had commenced investigation under regs 4 and 5 into the defendant and found the defendant to have carried on business without licences. I pause to add that the licences referred to were a licence to take deposits from depositors under the Finance Companies Act 1969 and a licence to lend money under the Moneylenders Ordinance 1951. He said further that liabilities had exceeded assets and that his client had already filed a petition for winding up of the defendant. The object was to ensure a rateable distribution of the assets or their proceeds among all depositors and to ensure that the said investigation was not frustrated. His client was charged with the duty of protecting the depositors.

Learned counsel for the defendant submitted that the intervener had no business to intervene as the intervener was not invited. The intervener had no locus standi. The said Regulations did not give the intervener power to stop the execution. He could not compel the rest of the depositors to come to court. After the expenses of accountants and solicitors employed by the intervener were paid, there might be nothing left for the execution creditors.

Article 150 of the Federal Constitution made possible the birth of the Emergency (Essential Powers) Act 1979 and the said Regulations were made under the said Act.

Under the said Regulations, the Central Bank or Bank Negara Malaysia appears to have the optimum and omnibus powers to investigate and control anybody engaged in the business of deposit-taking defined in the said Regulations as acceptance of any money or deposit or loan by a borrower from more than ten persons etc.

Regulations 4 and 5 give power to investigate in diverse manners and among the things which Bank Negara Malaysia can do are provided by reg 9.

Regulations 4, 5 and 9 are set out below:

> 4(1) The Central Bank may investigate into the affairs of any person it suspects or has reason to believe is a deposit-taker.
>
> (2) The power to investigate into the affairs of any person referred to in paragraph (1) shall include the power to investigate into the affairs of –
> (a) any person who is in whole or in part, or in any manner or to any extent, concerned with the control or the management of the affairs of the first-mentioned person;
> (b) any person who owns any share or interest in the property of the first-mentioned person;
> (c) any relative, employee or agent of the person;
> (d) any relative, employee or agent of any of the persons mentioned in subparagraph (a), (b) or (c);
> (e) any depositor with the person; or
> (f) any corporation in which the person or any person referred to in subparagraph (a), (b), (c) or (d) has an interest in shares of that corporation.
>
> 5(1) For the purpose of any investigation under regulation 4, the Central Bank shall have powers in relation to any person referred to in regulation 4 to –
> (a) enter and search any office or place of business or residence, and inspect any books or other documents whatsoever, of the person;
> (b) require the person to produce to an officer of the Central Bank or a public officer any accounts, books or other documents including any travel or other personal documents whatsoever under his custody or control;
> (c) require the person to be examined by an officer of the Central Bank or a public officer on oath or affirmation, or by notice in writing require the person to appear before an officer of the Central Bank or a public officer for examination on oath or affirmation in relation to the affairs or business of the person; and
> (d) in the course of investigation –
> (i) seize, take possession of, and retain for such time as it deems necessary, any object, article, material or thing, or any accounts, books or other documents including any travel or other personal documents whatsoever of or relating to the person; and
> (ii) search the person, if anything referred to in sub-subparagraph (i) is capable of being concealed

upon the person, provided always that whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(2) A person in respect of whom a search or an examination is being carried out under paragraph (1) shall be legally bound to submit himself to such search and examination and shall, throughout the period of such search and examination, be deemed to be in the lawful custody of the person or persons carrying out such search or examination.

(3) In conducting any examinations under subparagraph (c) of paragraph (1), the officer conducting the examination may cause the proceedings of the examination to be recorded in writing.

(4) The record of an examination made pursuant to paragraph (3) shall be read to and signed by the person examined, and where the person examined refuses to sign the record, the officer conducting the examination shall endorse thereon under his hand the fact of such refusal and the reason therefor, if any, stated by the person examined.

(5) Any findings, investigating reports or other documents relating to an investigation under these Regulations, and a record of examination under paragraph (3), shall, notwithstanding any other written law or rule of law relating to evidence, be admissible in any proceedings under these Regulations or under any other law in any court.

(6) The Central Bank may –
(a) grant permission to any person to have access to anything seized and taken possession of during the course of an investigation; or
(b) disclose or make available to any police or other public officer any findings, record of examination, investigation reports, or other documents relating to an investigation under these Regulations.

(7) A person answering any question by any officer pursuant to the exercise of any powers under this regulation shall be legally bound to answer such question and to state the truth and shall not refuse to answer any question on the ground that it tends to incriminate him, and any answer given by him, whether or not it tends to incriminate him, may be used in any criminal proceedings against him.

9(1) Where the Central Bank is satisfied that any person is a deposit-taker, it may do one or more of the following:
(a) require the deposit-taker to forthwith cease all or any transactions or activities relating to its business, and refund all monies paid by any depositor in such manner as the Central Bank may direct;
(b) assume control of and carry on the whole or any part of the business of the deposit-taker as the Central Bank deems fit, or appoint any person to do so on the Central Bank's behalf;
(c) apply to the High Court to appoint a receiver to manage the affairs and property of the deposit-taker and for such incidental or ancillary orders or directions in relation to such appointment as may, in the opinion of the Central Bank, be necessary or expedient;
(d) in the case of a corporation, present a petition to the High Court for the winding up of the corporation, and the court shall accordingly have the power to make an order for the winding up of the corporation notwithstanding anything contained in the Companies Act 1965;
(e) in the case of a co-operative society, require the Registrar-General of Co-operative Societies to make an order for the cancellation of the registration of the co-operative society, and the Registrar-General shall accordingly cancel the registration of the co-operative society and shall have the power to do so upon being so required notwithstanding anything contained in the Co-operative Societies Act 1948; or
(f) in the case of a pawnbroker, direct any licensing officer appointed under subsection (2) of section 10 of the Pawnbrokers Act 1972 to cancel the licence granted under the Act to the pawnbroker, and such licensing officer shall accordingly cancel the licence and shall have the power to do so on being so directed notwithstanding anything contained in that Act.

(2) The powers of the Central Bank under paragraph (1) shall not be exercised in relation to a co-operative society unless the Central Bank is satisfied that the co-operative society is unable, or is likely to become unable, to meet its deposit liability to any extent.

(3) Pursuant to subparagraph (b) of paragaraph (1) –
(a) the Central Bank or any person appointed for the purpose by the Central Bank shall assume control and carry on the whole or any part of the business of the deposit-taker until such time as –
(i) the deposit liabilities of the deposit-taker have been repaid or the Central Bank is satisfied that suitable provision has been made for their repayment; or
(ii) in the opinion of the Central Bank it is no longer necessary or expedient to do so; and
(b) the deposit-taker or any person associated with the deposit-taker in the manner specified in paragraph (2) of regulation 4 shall –
(i) submit the business to the control of the Central Bank or the person appointed for the purpose by the Central Bank; and
(ii) provide the Central Bank or the person appointed for the purpose by the Central Bank all such facilities or assistance as may be reasonably required to carry on the whole or any part of the business.

Learned counsel for the plaintiff submitted that Bank Negara Malaysia had no locus standi or could not so intervene. I did not think that learned counsel's contention was right.

Lord Diplock in *Pegang Mining Co Ltd* v *Choong Sam & Ors*[1] in determining as to whether the applicant therein ought to be given leave to intervene in those proceedings, adopted the test in the following words: 'a better way of expressing the test is: will his rights against or liabilities to any party to the action, in respect of the subject matter of the action, be directly affected by any order which may be made in the action?'

Action was taken by the government obviously to protect those who deposited their money with the defendant, and in a sense, an emergency situation had come into existence threatening 'the economic life' of those depositors on account of the supervening insolvency of the defendant, which took the deposit of these depositors. One of the ways to protect them would be to give

back all the depositors a percentage of the refund of their deposits rather than to leave them in the lurch with nothing to hope for.

The said Regulations were designed, inter alia, to create such an equitable situation. If the auction of the lands went ahead at the behest of the plaintiff and some of the creditors, there being no other worthwhile asset for those so left in the lurch, Bank Negara Malaysia would obviously be frustrated in their duty and functions under the said Regulations, in other words, their rights against the defendant herein under the said Regulations would be directly affected by the order made on the summons for directions for sale in regard to the sale of the defendant's lands. Any contention to the contrary would, in my view, be otiose.

The Privy Council in *Pegang Mining Co Ltd*[1] confirmed the order of allowing the intervention through the instrumentality of O 16 r 11 of the repealed Rules of the Supreme Court. The said O 16 r 11 would appear to be in pari material with O 15 r 6 of our present Rules of the High Court 1980.

Bank Negara Malaysia therefore had good reasons to intervene and be heard, in other words also, it had the locus standi, the lack of which was complained of by the plaintiff.

The court next considered the question as to whether this court had jurisdiction to grant a stay of execution of the judgment obtained by the plaintiff in this case, and then decided that it had more than ample jurisdiction to do so for the following reasons.

At the hearing before me, a petition for winding up had already been presented against the defendant (judgment debtor) so that s 224 of the Companies Act 1965 came into operation and the order to stay granted was really declaratory of the effect of the said s 224 which provides as follows:

> Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the court shall be void.

The Companies Act 1965 is not the only statute that confers jurisdiction on the court to stay execution of a judgment; another statute that comes readily to mind is the Bankruptcy Act 1967 in regard to a judgment against a natural person. There are conceivably other statutes with similar provisions.

Apart from statutes, the Rules of the High Court also confer similar jurisdiction, thus eg the jurisdiction to grant a stay of execution pending appeal; under O 47 r 1, there is jurisdiction to grant a stay of execution of a money judgment when (a) there are special circumstances which render it inexpedient to enforce the judgment or (b) when the applicant is unable from any cause to pay money; under O 14 r 6(1)(b), on an O 14 application for summary judgment, where the court grants judgment to a plaintiff and it can also stay the execution of it pending trial of the defendant's counterclaim; and under O 45 r 11, the court grants a stay of execution on the ground of matters which have occurred since the date of judgment.

In granting the stay of execution in the instant case, the court bore in mind also the clear differences between granting a stay of execution and granting a stay of proceedings (excluding the proceeding of granting a stay of execution), the latter not being in question herein any discussion thereon for the time being will be superfluous.

Application allowed.

Solicitors: *Shook Lin & Bok*; *Nga Hock Cheh & Co.*

Reported by *Ng Sheau Jiuan*

Rajoo s/o Ramasamy v Inspector General of Police & Ors

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY CRIMINAL APPLICATION NO CR54-10-88
ANUAR J
17 NOVEMBER 1988

Preventive Detention – Detention order issued by Minister under Dangerous Drugs (Special Prevention Measures) Act 1985 – Inquiry officer merely relied on investigating officer's report when submitting his own report to Minister – Failure on inquiry officer's part to make an 'inquiry' – Report submitted to Minister bad in law – Detention order thus null and void – Dangerous Drugs (Special Preventive Measures) Act 1985, s 5(2)

Words and Phrases – 'Shall inquire' – Dangerous Drugs (Special Preventive Measures) Act 1985, s 5(2)

The applicant was arrested under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). Subsequently, the Deputy Minister of Home Affairs ('the Minister') issued an order under s 6 of the Act directing that the applicant be detained for a period of two years. The applicant filed an application for an order that a writ of habeas corpus be issued to the respondents to have the applicant produced before the court, on the ground that the order issued by the Minister was bad in law and null and void.

Held, allowing the application:

(1) Upon the proper construction of s 5(2) of the Act, it is imperative that upon receipt of the report submitted by the police officer under s 3(3) of the Act, the inquiry officer shall inquire whether there are reasonable grounds for believing that the person detained is involved in trafficking in dangerous drugs. However, the inquiry officer did not do so. What the inquiry officer did was merely to read the report submitted to him by the investigating officer and based on that report he submitted a report to the Minister.